ALRB CASE DIGEST SUPPLEMENTS

20 ALRB NOS. 1-20
21 ALRB NOS. 1-14
22 ALRB NOS. 1-15
COURT DECISIONS 1/1/94-6/30/97

101.00 APPLICABILITY OF NLRB AND LMRDA PRECEDENT AND OTHER STATUTES; LABOR CODE SECTION 1148

101.02 Agriculture Distinguished; NLRB Not Applicable

101.02 In evaluating an employer's compliance with the requirement to provide an accurate Excelsior list, the ALRB has been somewhat more flexible than the NLRB, in recognition of the special problems agricultural employers face in obtaining accurate, up to date street addresses. The ALRB applies an outcome determinative test and will not presume that a failure to provide a substantially complete list would have a prejudicial effect upon the election. LEMINOR, INC., et. al, 22 ALRB No. 3

101.06 Resolution of Conflicts Between ALRB and Other Federal or State Statutes; Labor Code Section 1166.3(b)

101.06 Marketing commission (Table Grape) is not empowered by its enabling statute, the Ketchum Act, to file unfair labor practice charges, therefore, it has no standing under ALRA to file such charges. *UFW* v. *ALRB (Table Grape Commission)*, 41 Cal. App. 4th 303 [48 Cal.Rptr.2d 696] (setting aside *UFW (Table Grape Commission)* (1993) 19 ALRB No. 15)

102.00 SCOPE OF ALRB JURISDICTION

102.01 In General

102.01 Although Labor Code §98.6 provides a remedy of reinstatement and reimbursement for lost wages resulting from discrimination against employees who file claims with Labor Commissioner, §1160.9 of ALRA confers exclusive jurisdiction on Board over ULPs arising from concerted activity of employees who act

together in filing such claims.
IMPERIAL ASPARAGUS FARMS, INC., 20 ALRB No. 2

102.01 Matter dismissed because, under existing precedent, Board preempted from proceeding to adjudicate merits of unfair labor practice allegations where prior NLRB decision finding employer's packing shed to be commercial operation under the rule adopted in Camsco Produce Co., Inc. (1990) 297 NLRB 905 included factual findings showing that employer packed outside produce during the period up to and including the time of the alleged unfair labor practices.
GERAWAN FARMING CO., INC., ET AL., 21 ALRB No. 6

102.01 Assertion of prospective jurisdiction by the NLRB preempts ALRB from asserting jurisdiction over an earlier period, absent evidence that the employer's operations had changed, even where ALRB jurisdiction had previously been undisputed.
Bud Antle v. *Barbosa, et al.,* 45 F.3d 1261 (1994)

102.02 Jurisdictional Standard; Refusal of NLRB To Take Jurisdiction

102.02 Assertion of prospective jurisdiction by the NLRB preempts ALRB from asserting jurisdiction over an earlier period, absent evidence that the employer's operations had changed, even where ALRB jurisdiction had previously been undisputed.
Bud Antle v Barbosa, et al., 45 F.3d 1261 (1994)

104.00 CONSTITUTIONAL, STATUTORY AUTHORITY OF BOARD

104.01 Authority of Board in General; Validity and Application of Regulations; Adjudication v. Regulations

104.01 Board may develop generally applicable rules by adjudication rather than exclusively through rulemaking.
GALLO VINEYARDS, INC. 21 ALRB No. 3

105.00 DIVISION OF AUTHORITY WITHIN ALRB

105.04 General Counsel of ALRB

105.04 General Counsel exercised exclusive prosecutorial discretion in dismissing charge against union; therefore, even if record reflects equal complicity among employer and union, Board is without authority to add the union to the complaint even if it desired to do so.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

200.00 PARTIES AFFECTED; DEFINITIONS

200.01 In General; Definitions of Employer and Employee; Labor Code Sections 1140.4(b) and (c)

200.01 Individuals who have separately organized businesses and provide specialized services on an as needed basis, and who are not included on required payroll records of the employer are not agricultural employees within the meaning of section 1140.4, subdivision (b).
SIMON HAKKER, 20 ALRB No. 6

200.01 Employer failed to meet burden to prove nutritionist was employee not given notice of election where record shows only that nutritionist received fixed monthly fee for working on an as needed basis, works for other companies, and that employer could not recall if payments were reported to appropriate authorities in same manner as those to employees.
GH & G ZYSLING DAIRY, 20 ALRB No. 3

200.01 Board may properly assert jurisdiction over employees who spend a substantial amount of work time engaged in what is indisputably agriculture; fact that same employees allegedly perform a substantial amount of nonagricultural work does not mean that they are wholly within NLRB jurisdiction, but only that mixed work situation may exist.
ROYAL PACKING COMPANY, 20 ALRB No. 14

200.01 Worker who volunteers labor for employer as part of rehabilitation program is not an "employee" and therefore is not in the bargaining unit or eligible to vote.
SIMON HAKKER, 20 ALRB No. 6

200.01 In General; Definitions Of Employer And Employee; Labor Code Sections 1140.4(b) and (c)

200.01 Individual who leases acreage to employer and feeds cattle assigned there by employer, in exchange for $200 per month, is not an "employee" and therefore is not in the bargaining unit or eligible to vote.
SIMON HAKKER, 20 ALRB No. 6

200.01 Neighboring farmer who disks fields for employer in exchange for use of equipment on own farm is not an "employee" and therefore is not in the bargaining unit or eligible to vote.
SIMON HAKKER, 20 ALRB No. 6

202.00 WHO IS AN EMPLOYER

202.06 Custom Harvester

202.06 Since evidence was equivocal and party filing objections to election has burden of proof, employer failed to show that entity providing harvesting crew not given notice of election was a labor contractor rather than a custom harvester. Thus, since it was not shown that the crew were employees of the employer, there was no genuine issue of disenfranchisement.
GH & G ZYSLING DAIRY, 20 ALRB No. 3

202.06 Payment by the ton, risk of loss to roadside, and provision of nonspecialized equipment, while some evidence of custom harvester status, is insufficient to remove harvesting entity from labor contractor exclusion.
SAN JOAQUIN TOMATO GROWERS, INC., 20 ALRB No. 13

202.06 Entity which owns packing shed and, pursuant to its contracts with individual growers, monitors all cultivation practices and is responsible for harvesting, hauling, packing, and marketing of tomatoes is properly assigned the bargaining obligation because it has the substantial long term interest in the agricultural operations, even if entity hired to do harvesting is a custom harvester.
SAN JOAQUIN TOMATO GROWERS, INC., 20 ALRB No. 13

202.07 Labor Contractor Exclusion; Person Engaging As Employer; Labor Code Section 1682

202.07 Payment by the ton, risk of loss to roadside, and provision of nonspecialized equipment, while some evidence of custom harvester status, is insufficient to remove harvesting entity from labor contractor exclusion.
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shown that the crew were employees of the employer, there was no genuine issue of disenfranchisement.
GH & G ZYSLING DAIRY, 20 ALRB No. 3

202.11 Successor Companies; Alter Egos

202.11 Settlement which released only named respondent and did not fully satisfy the makewhole specification does not preclude derivative liability proceeding against successors, alter egos, etc.
ALRB v. *San Benito County Superior Court (Heublein, Inc.)* (1994) 29 Cal.App.4th 688 [34 Cal.Rptr.2d 546]

202.11 Since bargaining obligation of an employer who purchased and continued to operate the whole of a predecessor's operations applies to all employees in the certified unit, employer cannot refuse to bargain concerning employees in a specific crop operation on grounds original unit no longer exists due to changes in overall acreage, kinds of crops produced, or employee turnover.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

202.11 Newly named respondent could not have been denied due process where Board has yet to conduct derivative liability hearing or make any findings. Assertion that derivative liability claim is groundless does not allow avoidance of Board

proceedings and regular avenue of appellate review to establish relevant facts.

ALRB v. *San Benito County Superior Court (Heublein, Inc.)* (1994) 29 Cal.App.4th 688 [34 Cal.Rptr.2d 546]

202.11 ALRB has authority, in the first instance, to hold derivative liability hearing to determine if relationship to named respondent is such that derivative liability is appropriate; therefore, Superior Court had no authority to grant writ of prohibition.

ALRB v. *San Benito County Superior Court (Heublein, Inc.)* (1994) 29 Cal.App.4th 688 [34 Cal.Rptr.2d 546]

202.12 Joint Or Separate Employers; Integrated Or Autonomous Operations

202.12 Two individuals working for lessee on adjoining land leased from employer not disenfranchised by lack of notice of election because evidence showed they were not employees of the employer. Employer's occasional supervision insufficient to establish joint employer relationship and general oversight of operation by employer is insufficient to establish single employer theory where no evidence or centralized control of labor relations or common ownership.
GH & G ZYSLING DAIRY, 20 ALRB No. 3

202.12 Corporation and partnership were single integrated enterprise where partnership owned equipment integral to corporation's operation of plant, obligations between entities were not enforced, common facilities, supplies, professional services and lending institutions were used, and assets were transferred for nominal consideration.
Claassen Mushrooms, Inc. 20 ALRB No. 9

204.00 SUPERVISORS

204.03 Assignments Or Direction Of Work; Adjustment Of Grievances; Independent Judgement; Responsibility

204.03 Assistant to ranch foreman, though salaried, is not a supervisor where he merely carries out instructions of supervisor and does not exercise independent judgement or have independent authority to exercise any of the duties listed in the definition of supervisor.
TAYLOR FARMS, 20 ALRB No. 8

300.00 QUESTION CONCERNING REPRESENTATION

300.01 In General, Labor Code Section 1156-1159

300.01 Employer's bad faith bargaining during the period prior to the filing of a decertification petition normally precludes the finding of a bona fide question concerning representation.
P.H. RANCH, INC., et al., 21 ALRB No. 13

302.00 PRE-PETITION MATTERS

302.02 Notice Of Intent To Organize; Pre-Petition Lists; Special Requirements In Citrus Industry

302.02 Since Notices of Intent to Organize remain viable for days from the date on which a valid Notice of Intent to Take Access is filed, a deficient showing of interest will not cause the NO to be dismissed prior to expiration of the NA, and the showing may be perfected at any time during the 30 day pendency of the NA.
DUTRA FARMS, 22 ALRB No. 6

302.04 Payroll List, Duty To Maintain: Labor Code Section 1157.3

302.04 In evaluating an employer's compliance with the requirement to provide an accurate Excelsior list, the ALRB has been somewhat more flexible than the NLRB, in recognition of the special problems agricultural employers face in obtaining accurate, up to date street addresses. The ALRB applies an outcome determinative test and will not presume that a failure to provide a substantially complete list would have a prejudicial effect upon the election.
LEMINOR, INC., et. al, 22 ALRB No. 3

302.04 Election results upheld where Excelsior list contained 19 inadequate addresses and the number of votes necessary to change the outcome was 13, where there were no additional circumstances beyond the list's facial deficiencies that would support the conclusion that the outcome of the election would have been affected by the defective list.
LEMINOR, INC., et. al, 22 ALRB No. 3

302.04 Essential inquiry is whether faulty Excelsior list would tend to affect the outcome of the election. Where the number of inadequate addresses dwarfs the shift in the number of votes necessary to change the outcome, the election is normally set aside. However, where the number of inadequacies merely exceeds the number of votes necessary to change the outcome by an insubstantial margin, that alone will not result in the election being set aside. Among the other factors to be considered are the actual use of the list by the Union, the efforts of the Employer to compile an accurate list, and the efforts of Board agents to facilitate the process of providing the list to the Union.
LEMINOR, INC., et. al, 22 ALRB No. 3

302.05 Motion To Deny Access

302.05 "Intentional harassment" within the meaning of Ranch No. 1 (1979) 5 ALRB No. 36 is established where the facts reflect that union organizers took access not with the intent to communicate with employees and gather their support, but with an ulterior motive to harass.
GARGIULO, INC., 22 ALRB No. 9

302.05 Blocking of ingress and egress on a public road does not fall within the rubric of access.
GARGIULO, INC., 22 ALRB No. 9

302.05 Allegation that union organizer, along with others, entered the employer's property at improper times and stated that he would decide what the (access) rules were reflects intentional or reckless disregard for Board's access regulations.
GARGIULO, INC., 22 ALRB No. 9

302.05 Declarations showing that union organizers entered property and began inspecting portable toilets, and only spoke with employees after employer told them that was only proper use of access, are sufficient to establish a prima facie case that the UFW organizers showed an intentional and/or reckless disregard for the Board's access regulation by entering the employer's property for the primary purpose of inspecting the property, rather than communicating with the employees about unionization. Where declarations reflect that organizers wore ID badges and do not reflect that organizers represented themselves as being from CAL-OSHA or another governmental health and safety agency, and that organizers tried to present to employer's general manager what was described only as a sheet of paper with a list of violations, allegations that organizers posed as CAL-OSHA agents or attempted to issue counterfeit CAL-OSHA citations are dismissed.
RAMIREZ FARMS, 22 ALRB No. 11

302.05 Board grants hearing in order to determine whether access rule was abused in a manner which would warrant barring union and/or organizers for one year based on employer's demonstrated showing that organizers took access for what appears to have been primary purpose of examining toilet facilities and then served supervisor with a one-page OSHA form in which they noted that employer had failed to post minimum wage requirements.
KUSUMOTO FARMS, 22 ALRB No. 11

302.05 Hearing warranted where facts in supporting declarations showing that union organizers, rather than taking access to communicate with employees about the union, instead inspected the property and posed as representatives of a governmental health and safety agency when talking to employees. Such facts reflect a
prima facie case that the union and its organizers exhibited an intentional or reckless disregard of the access rules.
NAVARRO FARMS, 22 ALRB No. 10

302.05 Bare allegation that group of people were union organizers is insufficient to make conduct

attributable to union absent facts reflecting why they were so identified. Violations of property rights by those other than union agents, while subject to trespass laws, do not fall within the Board's jurisdiction.
GARGIULO, INC., 22 ALRB No. 9

302.05 Very brief entry onto employer's property at improper times does not, without more, constitute "significant disruption."
GARGIULO, INC., 22 ALRB No. 9

302.05 The Board will not assume that missing factual elements of a prima facie case which are not addressed in the supporting declarations will be furnished at hearing.
GARGIULO, INC., 22 ALRB No. 9

302.05 In accordance with Ranch No. l, Inc. (1979) 5 ALRB No. 36 and Dutra Farms (1996) 22 ALRB No. 5, a hearing will not be set unless the supporting declarations accompanying the motion include facts which, if proven, would establish a violation of the access regulations which would warrant the denial of access for some period of time, i.e., one which involved (l) significant disruption of agricultural operations, (2) intentional harassment of an employer or employees, or (3) intentional or reckless disregard of the rules.
GARGIULO, INC., 22 ALRB No. 9

302.05 Board sets forth a procedure requiring that all motions to deny access shall be accompanied by a detailed statement of the facts and law relied upon, and declarations within the personal knowledge of the declarant which, if uncontroverted or unexplained, would support the granting of the motion. The procedure requires the moving party to file and serve the motion and accompanying documents in accordance with Board regulations 20160(a)(2), 20166 and 20168.
DUTRA FARMS, 22 ALRB No. 5

302.05 Employer's motion to bar UFW organizer from taking access to its property is denied for failure to make prima facie showing that organizer violated access regulations. Since regulations do not put employers

on notice that they should submit declarations with their motions to deny access, motion is denied without prejudice to refile with supporting declarations.
DUTRA FARMS, 22 ALRB No. 5

303.00 PEAK

303.01 In General; Labor Code Section 1156.4; Crop And Acreage Statistics

303.01 Board's regulations section 20310(a)(6)(B) is not binding on the Board in view of holding of court in Adamek & Dessert, Inc. v. ALRB (1986) 178 Cal.App.3d 970 [224 Cal.Rptr. 366] that direction in that regulations section to average the number of employees on the preelection payroll was contrary to the statute, even though rulemaking process to replace the overruled language of section 20319(a)(6) has not finally been concluded.
GALLO VINEYARDS, INC. 21 ALRB No. 3

303.01 Regional Director properly followed Board decision in Triple E Produce, Inc. (1990) 16 ALRB No. 14, by comparing average during peak employment payroll period with the absolute number of employees on the payroll for the payroll period ending immediately preceding the filing of the petition.
GALLO VINEYARDS, INC. 21 ALRB No. 3

303.01 Board may promulgate general rules applicable to peak determination through case-by-case adjudication, and is not required to proceed only by rulemaking under the Administrative Procedures Act (Gov. Code, sec. 11370 et seq.).
GALLO VINEYARDS, INC. 21 ALRB No. 3

303.01 No denial of due process by placing burden on employer to provide information to support contention that petition filed when at less than 50 percent of peak employment.
ALRB v. *Superior Court (Gallo Vineyards, Inc.)* (1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

303.01 In light of the ambiguous language of section 1156.4, the Board's own interpretation, the

employer's failure to present evidence of crop and acreage statistics that it claims the Board did not uniformly apply, and the *Scheid* decision (22 Cal.App.4th 139) (which held that it is employer's burden to provide crop and acreage statistics and does not suggest that Board has duty to create uniform statistics to be used in calculating peak), there was no plain violation of an unambiguous statute justifying application of *Leedom* v. *Kyne* exception.

ALRB v. *Superior Court (Gallo Vineyards, Inc.)* (1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

303.01 Board is bound by court's holding in Adamek & Dessert, Inc. v. ALRB (1986) 178 Cal.App.3d 970 [224 Cal.Rptr. 366], that it may not use an average of the number of employees on the payroll for the period immediately preceding the filing of the petition to determine peak under section 1156.3(a)(1).
GALLO VINEYARDS, INC. 21 ALRB No. 3

303.01 Board properly examined reasonableness of RD's peak decision when made and disregarded employer's additional crop and acreage information provided for first time as part of election objections. RD reasonably relied on payroll information, employer's peak projections, and admission on response form that employer was at 50% of peak, even though response form also contained unsupported pre-petition payroll figure that was short of peak.

Scheid Vineyards and Management Co. v. ALRB, (1994) 22 Cal. App. 4th 139 [27 Cal.Rptr.2d 36], affirming 19 ALRB No. 1

303.03 Board properly examined reasonableness of RD's peak decision when made and disregarded employer's additional crop and acreage information provided for first time as part of election objections. RD reasonably relied on payroll information, employer's peak projections, and admission on response form that employer was at 50% of peak, even though response form also contained unsupported pre-petition payroll figure that was short of peak.

Scheid Vineyards and Management Co. v. ALRB,

(1994) 22 Cal. App. 4th 36 [27 Cal.Rptr.2d 36], affirming 19 ALRB No. 1

303.02 Past Peak

303.02 Regional Director correctly determined peak by comparing body count during eligibility period to the sum of the number of regular employees and highest daily number of labor contractor employees during peak period, since labor contractor employees had high turnover. Thus, Employer's election objection as to the method used was properly dismissed by Executive Secretary. WARMERDAM PACKING COMPANY, 20 ALRB No. 12

303.02 Board affirms dismissal of Employer's election objection contending that Regional Director should have compared total hours worked during eligibility period to total hours worked during peak, or should have averaged "man days" of both periods. Such methods of calculating peak are contrary to Board and court precedent. (Adamek & Dessert, Inc. v. ALRB (1986) 178 Cal.App.3d 970.) WARMERDAM PACKING COMPANY, 20 ALRB No. 12

303.03 Prospective Peak

303.03 Regional Director properly concluded, based on information available prior to the election, that Employer's labor requirements would not increase sufficiently to render the number of employees on the pre-petition payroll less than half the number for the projected future peak for the same year. GALLO VINEYARDS, INC. 21 ALRB No. 3

303.03 No denial of due process where Board declined to follow invalidated regulation and had previously announced method in which prospective peak would be calculated in light of invalidation.
ALRB v. *Superior Court (Gallo Vineyards, Inc.)* (1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

307.00 TIME FOR FILING PETITION

307.01 In General

307.01 Rival union petition may not be filed during ALRA bar period. In contracts lasting four years or less, the bar period ends one year before the contract expiration date. In contracts of four years or longer, the bar period expires at end of third year.
MONTEREY MUSHROOMS, INC. 20 ALRB No. 5

307.01 Under Cadiz v. ALRB (1979) 92 Cal.App.3d 365 [155 Cal.Rptr. 213], the Board cannot rely on NLRB precedent where the language of section 1156.7 differs from the NLRB's case law-based contract bar rules.
MONTEREY MUSHROOMS, INC. 20 ALRB No. 5

307.06 Pendency Of Unfair Labor Practice Charges Or Other Proceedings; "Blocking Charge" Rule

307.06 Where employer's unlawful refusal to respond to union inquiries and to continue bargaining derailed promising negotiations and included the three and half months preceding the decertification election, such conduct would tend to interfere with employee free choice and warrants dismissal of decertification petition.
P.H. RANCH, INC., et al., 21 ALRB No. 13

312.00 ELIGIBILITY TO VOTE

312.01 In General; Labor Code Section 1157 (see section 201)

312.01 Worker who volunteers labor for employer as part of rehabilitation program is not an "employee" and therefore is not in the bargaining unit or eligible to vote.
SIMON HAKKER, 20 ALRB No. 6

312.01 Two individuals working for lessee on adjoining land leased from employer not disenfranchised by lack of notice of election because evidence showed they were not employees of the employer. Employer's occasional supervision insufficient to establish joint employer relationship and general oversight of

operation by employer is insufficient to establish single employer theory where no evidence or centralized control of labor relations or common ownership.
GH& G ZYSLING DAIRY, 20 ALRB No. 3

312.01 Individual who leases acreage to employer and feeds cattle assigned there by employer, in exchange for $200 per month, is not an "employee" and therefore is not in the bargaining unit or eligible to vote.
SIMON HAKKER, 20 ALRB No. 6

312.01 Neighboring farmer who disks fields for employer in exchange for use of equipment on own farm is not an "employee" and therefore is not in the bargaining unit or eligible to vote.
SIMON HAKKER, 20 ALRB No. 6

312.01 Whether voters have satisfied requirement to provide sufficient identification is within Board agent's discretion. Where voters have provided no identification at all, the investigation must provide sufficient evidence to satisfy the concerns of the Board agent and Regional Director as to the voters' identity. Where neither voters nor parties respond to written requests to provide evidence to satisfy these concerns, Board will sustain challenges for failure to present identification.
OCEANVIEW PRODUCE COMPANY, 20 ALRB No. 10

312.01 Individuals who have separately organized businesses and provide specialized services on an as needed basis, and who are not included on required payroll records of the employer are not agricultural employees within the meaning of section 1140.4, subdivision (b).
SIMON HAKKER, 20 ALRB No. 6

312.02 Names-And-Addresses (Excelsior) Rule; Eligibility Lists: Stipulations

312.02 In evaluating an employer's compliance with the requirement to provide an accurate Excelsior list, the ALRB has been somewhat more flexible than the NLRB, in recognition of the special problems agricultural employers face in obtaining accurate,

up to date street addresses. The ALRB applies an outcome determinative test and will not presume that a failure to provide and will not presume that a failure to provide a substantially complete list would have a prejudicial effect upon the election. LEMINOR, INC. et al, 22 ALRB No. 3

312.02 Essential inquiry is whether faulty Excelsior list would tend to affect the outcome of the election. Where the number of inadequate addresses dwarfs the shift in the number of votes necessary to change the outcome, the election is normally set aside. However, where the number of inadequacies merely exceeds the number of votes necessary to change the outcome by an insubstantial margin, that alone will not result in the election being set aside. Among the other factors to be considered are the actual use of the list by the Union, the efforts of the Employer to compile an accurate list, and the efforts of Board agents to facilitate the process of providing the list to the Union. LEMINOR, INC., et. al, 22 ALRB No. 3

312.02 Election results upheld where Excelsior list cotained 19 inadequate addresses and the number of votes necessary to change the outcome was 13, where there were no additional circumstances beyond the list's facial deficiencies that would support the conclusion that the outcome of the election would have been effected by the defective list. LEMINOR, INC. et al, 22 ALRB No. 3

312.03 Date As of Which Eligibility is Determined

312.03 Harvesting crew which harvests crop grown by lessee on adjoining land leased from employer, even if unit employees, not disenfranchised where none of varying dates provided by employer as to when the crew worked fell within the pre-petition payroll period. GH & G ZYSLING DAIRY, 20 ALRB No. 3

314.00 METHOD OF CONDUCTING ELECTION

314.01 Conduct Of Board Agents In General; Use Of Discretion

314.01 Board rejects Employer's contention that Board

agents should have heeded its observer's objection to the construction of a second ballot box without having first consulted with the Employer since the Board agents' decision in that regard is well within their broad discretion to conduct elections. Moreover, disputes about the fundamental exercise of Board agent discretion to manage the election require something more than just one party's preference that a different procedure be implemented. "The test is not whether optimum practices were followed, but whether on all the facts the manner in which the election was held raises a reasonable doubt as to its validity." OCEANVIEW PRODUCE CO. 20 ALRB No. 16 (1994)

314.01 Whereas any party to an election, as well as Board agents, may, for good cause shown, challenge any prospective voter on grounds expressly set forth in the regulations, Board agents have sole discretionary authority to determine adequacy of voter identification.
OCEANVIEW PRODUCE CO. 20 ALRB No. 16 (1994)

314.01 It is the Board's responsibility, not that of the parties, or the parties' observers, to establish the proper procedures for the conduct of elections. Board agents have considerable latitude in assuring that elections are conducted at a time and in a manner which facilitates maximum participation by eligible employees.
OCEANVIEW PRODUCE CO. 20 ALRB No. 16 (1994)

314.03 Secrecy Of Balloting; Handling Ballots And Ballot Box

314.03 Board rejects Employer's contention that Board agents should have heeded its observer's objection to the construction of a second ballot box without having first consulted with the Employer since the Board agents' decision in that regard is well within their broad discretion to conduct elections. Moreover, disputes about the fundamental exercise of Board agent discretion to manage the election require something more than just one party's preference that a different procedure be implemented. "The test is not whether optimum practices were followed, but whether on all the

facts the manner in which the election was held raises a reasonable doubt as to its validity."
OCEANVIEW PRODUCE CO. 20 ALRB No. 16 (1994)

314.03 Board rejects mere allegation that election should be invalidated because ballot box left unattended in Board agent's car near a voting site where union supporters were gathered. Employer did not allege that, for example, the box was left in the cabin of an unlocked car, in plain view, or in an unlocked trunk, where it could be accessed, or even suggest that there was actual tampering.
OCEANVIEW PRODUCE CO. 20 ALRB No.16 (1994)

314.06 Checking Names Or Challenging Voters

314.06 Election objection properly dismissed where declarations failed to establish that Board agents interfered with free choice by asking voters confusing and inconsistent questions about their job duties.
ROYAL PACKING COMPANY, 20 ALRB No. 14

314.07 Voter Identification

314.07 Whereas any party to an election, as well as Board agents, may, for good cause shown, challenge any prospective voter on grounds expressly set forth in the regulations, Board agents have sole discretionary authority to determine adequacy of voter identification.
OCEANVIEW PRODUCE CO. 20 ALRB No. 16 (1994)

314.07 Where Notice & Direction of Election advised prospective voters that identification is a precondition to receiving a ballot, and expressly set forth examples of such identification, Board has no duty to extend to voters challenged for failure to produce identification a post-election opportunity to do so.
OCEANVIEW PRODUCE CO. 20 ALRB No. 16 (1994)

314.09 Notice Of Election Or Of Preelection Hearings; Distribution; Defacement Of Notices; Voter Turnout

314.09 No genuine issue of disenfranchisement raised by lack of notice of election to individuals who the

employer failed to prove were in the bargaining unit and/or were working during the eligibility period.
GH & G ZYSLING DAIRY, 20 ALRB No. 3

314.16 Board Agent Bias or Appearance of Bias

314.16 Where Employer challenged voters as not being agricultural employees, Board agent's statement, in response to voter who asked why questions were being asked about his job duties, that it was because Employer "says if you're not a cutter, you are not a campesino," did not reflect Board agent bias, particularly where it was not shown how many voters may have heard the comment.
ROYAL PACKING COMPANY, 20 ALRB No. 14

315.00 ELECTIONS: ALRB REFUSAL TO CERTIFY

315.02 Standard For Setting Aside Election; Outcome-Determinative Test

315.02 Section 1156.3(c), which requires that the Board certify an election unless there are sufficient grounds to refuse to do so, has been interpreted to create a presumption in favor of certification of an election, with the burden of proof on the objecting party to demonstrate that an election should be set aside. In cases involving Excelsior lists, the complaining union must show that the inadequacies in the list actually impaired its ability to communicate with employees.
LEMINOR, INC., et. al, 22 ALRB No. 3

315.02 The burden of a party objecting to an election is not met merely by providing that misconduct did in fact occur, but rather by specific evidence demonstrating that such conduct interfered with the employees' exercise of their free choice to such an extent that the conduct changed the results of the election.
OCEANVIEW PRODUCE CO. 20 ALRB No. 16 (1994)

315.02 Probing subjective individual reactions of employees involves an "endless and unreliable inquiry" and is "irrelevant to the question whether there was, in fact, objectionable conduct."
OCEANVIEW PRODUCE CO. 20 ALRB No. 16 (1994)

316.00 EMPLOYER INTERFERENCE WITH ELECTIONS

316.06 Misrepresentations

316.06 Board rejects Employer's contention Union injected "racial animosity" into campaign when it utilized a campaign consultant's accusation of Union organizers of Mexican descent of "acting like a bunch of ignorant animals" in presence of a crew by later highlighting the incident in flyers and rallies, quoting the consultant as having said "all Mexicans are a bunch of ignorant animals." Board discussed cases in which NLRB distinguished appeals to racial prejudice from appeals to the racial pride of a particular ethnic minority.
OCEANVIEW PRODUCE CO. 20 ALRB No. 16 (1994)

316.09 Discharge, Layoffs, Transfers, Etc.; Claim Of Employer's Unfair Labor Practices

316.09 Where employer's unlawful refusal to respond to union inquiries and to continue bargaining derailed promising negotiations and included the three and half months preceding the decertification election, such conduct would tend to interfere with employee free choice and warrants dismissal of decertification petition.
P.H. RANCH, INC., et al., 21 ALRB No. 13

316.09 Executive Secretary properly dismissed union's election objections where alleged bad faith bargaining conduct of employer just prior to decertification election was not of a nature that it would inherently have immediate impact on free choice and union failed to show that employees were made aware of conduct and that it was used in some way to undermine support for the union.
COKE FARMS, INC., 20 ALRB No. 15

316.13 Threats and Promises; Questioning; Surveillance

316.13 NLRB and courts have found incidents where preelection photographing of employees demonstrating support for or against unionization may be coercive and intimidating because of employee fear that it could serve as basis for later reprisals. However,

research revealed no such cases where random picture taking of employees arriving to vote, standing alone, was deemed interference with free choice. OCEANVIEW PRODUCE CO. 20 ALRB No. 16 (1994)

316.15 Racial, National Origin, Sex, Etc Discrimination; Appeals to Prejudice

316.15 Board rejects Employer's contention Union injected "racial animosity" into campaign when it utilized a campaign consultant's accusation of Union organizers of Mexican descent of "acting like a bunch of ignorant animals" in presence of a crew by later highlighting the incident in flyers and rallies, quoting the consultant as having said "all Mexicans are a bunch of ignorant animals." Board discussed cases in which NLRB distinguished appeals to racial prejudice from appeals to the racial pride of a particular ethnic minority.
OCEANVIEW PRODUCE CO. 20 ALRB No. 16 (1994)

317.00 PARTICIPATION UNION'S OR EMPLOYEE INTERFERENCE WITH ELECTION

317.01 In General; Standards Applied To Party And Non-Party Conduct

317.01 Conduct of employees prior to union's involvement is not attributable to union under "mass action" theory of liability (Vulcan Materials Co. v. United Steel Workers (5th Cir. 1970) 430 F.2d 446 [74 LRRM 2818]) where no agency relationship was established.
ACE TOMATO CO., INC., 20 ALRB No. 7

317.03 Distribution of Literature; Letters and Notices to Employees; Sample Ballots

317.03 Election objection alleging distribution of sample ballot marked in favor of rival union did not warrant hearing where ballot varied so dramatically from an actual ballot that employees would not have been misled into thinking that it was an official ballot or an endorsement by the ALRB.
MONTEREY MUSHROOMS, INC., 21 ALRB No. 2

317.04 Misrepresentations

317.04 Union's leaflet which warned that Employer, consistent with already announced layoffs, might replace additional employees with labor contractor, was merely campaign propaganda which is not a sufficient basis to set aside election.
ROYAL PACKING COMPANY, 20 ALRB No. 14

317.06 Statements; Threats; Inducements: Waiver Of Initiation
Fee Or Dues

317.06 In case involving threat of job loss for failure to vote for union, it is not necessary to presume that employees believed that union would know how they voted if record provides no basis for such an inference.
OCEANVIEW PRODUCE CO., 21 ALRB No. 1

317.06 Vague and inconsistent testimony insufficient to establish threats of job loss for failing to sign authorization cards or to vote for the union.
OCEANVIEW PRODUCE CO., 21 ALRB No. 1

317.06 Where those who were allegedly subjected to threats of job loss for not supporting the union related the statements to co-workers, and the co-workers told them the comments were not true, such countervailing statements lessen, if not eliminate, any coercive effects of the alleged threats.
OCEANVIEW PRODUCE CO., 21 ALRB No. 1

317.08 Union Agents At Or Near Polls

317.08 NLRB and courts have found incidents where preelection photographing of employees demonstrating support for or against unionization may be coercive and intimidating because of employee fear that it could serve as basis for later reprisals. However, research revealed no such cases where random picture taking of employees arriving to vote, standing alone, was deemed interference with free choice.
OCEANVIEW PRODUCE CO. 20 ALRB No. 16 (1994)

317.11 Violence Or Threats Of Violence

317.11 Employer's attempt to rely on unproven incidents of

alleged misconduct, based on discredited testimony, does not provide legitimate basis for relitigating Board's decision certifying election.
ACE TOMATO CO., INC., 20 ALRB No. 7

317.11 Board will not presume dissemination of "threats" where election showed a large margin of victory, unit was large, no party agent or official made any threats, and examples cited as "threats" all involved conduct which IHE and Board found not to have occurred.
ACE TOMATO CO., INC., 20 ALRB No. 7

317.13 Excess Access By Union Agents

317.13 Employer made no showing that any threats, disruption or other misconduct occurred during taking of excess access by Union, nor that amount of access taken was so excessive that it would tend to intimidate or coerce employees. Thus, Board affirms Executive Secretary's dismissal of election objection.
WARMERDAM PACKING COMPANY, 20 ALRB No. 12

317.13 Alleged access improprieties insufficient to set aside election where not even clear if access was on Employer's property or during work time and, more importantly, no showing of threats or coercion.
ROYAL PACKING COMPANY, 20 ALRB No. 14

319.00 UNIT FOR BARGAINING; IN GENERAL; RANCH-WIDE, STATE-WIDE; AND MULTI-EMPLOYER UNITS

319.01 In General; Labor Code Section 1156

319.01 Section 1156.2 precludes Board from modifying original certification in order to sever out only a certain classification of employees on grounds union abandoned interest in representing only that aspect of the overall operation.
DOLE FRESH FRUIT CO. 22 ALRB No. 4

320.00 CERTIFICATION OF REPRESENTATIVES

320.04 Successor Company Or Successor To Certified Union: Change Of Union's Affiliation; Local And International Unions

320.04 Since bargaining obligation of an employer who purchased and continued to operate the whole of a predecessor's operations applies to all employees in the certified unit, employer cannot refuse to bargain concerning employees in a specific crop operation on grounds original unit no longer exists due to changes in overall acreage, kinds of crops produced, or employee turnover.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

320.05 Scope, Duration, And Effect Of Certification

320.05 Stalled negotiations, or even a hiatus in negotiations, cannot alone be the basis for refusing to bargain on the grounds the union is unable or unwilling to represent unit employees since an absence of negotiations need not necessarily translate into a disclaimer of interest.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

320.07 Revocation of Certification

320.07 Section 1156.2 precludes Board from modifying original certification in order to sever out only a certain classification of employees on grounds union abandoned interest in representing only that aspect of overall operation.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

321.00 PROCEDURE IN REPRESENTATION CASES

321.02 Scope Of Inquiry; Proof Of Unfair Labor Practices In Representation Case

321.02 The materials in the Board's election manual are not binding procedural rules, but are intended only to provide operational guidance in the handling of elections.
OCEANVIEW PRODUCE CO. 20 ALRB No. 16 (1994)

321.02 Probing subjective individual reactions of employees involves an "endless and unreliable inquiry" and is "irrelevant to the question whether there was, in fact, objectionable conduct."
OCEANVIEW PRODUCE CO. 20 ALRB No. 16 (1994)

322.00 PETITIONS

322.04 Parties

322.04 Employer may not request review of regional director's dismissal of decertification petition. Under Board regulations section 20393(a), only party whose petition was dismissed has standing to file an appeal of the dismissal. Application of this provision to decertification petitions is consistent with Legislature's purpose of making employees sole moving parties in decertification petitions.
LEWIS FARMS, 21 ALRB No. 7

323.00 HEARINGS

323.08 Burden Of Proof

323.08 Party filing election objections has burden of proving that misconduct warranted setting aside election.
OCEANVIEW PRODUCE CO., 21 ALRB No. 1

323.08 The burden of a party objecting to an election is not met merely by providing that misconduct did in fact occur, but rather by specific evidence demonstrating that such conduct interfered with the employees' exercise of their free choice to such an extent that the conduct changed the results of the election.
OCEANVIEW PRODUCE CO. 20 ALRB No. 16 (1994)

323.08 The party filing election objections bears the burden of proving by a preponderance of evidence that its objections are meritorious and warrant setting aside the election.
GH & G ZYSLING DAIRY, 20 ALRB No. 3

324.00 ELECTION OBJECTION PROCEEDING

324.02 Screening For Prima Facie Case; Right To Hearing; Dismissal Without Hearing; Appeal

324.02 Executive Secretary properly dismissed objection alleging intimidation of voters, because none of the described conduct could objectively be considered

intimidating or coercive. Subjective feelings of fear, not reasonably based in fact, are irrelevant.
CALIFORNIA REDI-DATE, INC., 20 ALRB No. 11

324.02 Regulation 20365 requires that declarations and other supporting materials be submitted along with objections; therefore, new submissions accompanying request for review of Executive Secretary's dismissal of election objections will not be considered.
COKE FARMS, INC., 20 ALRB No. 15

324.02 Executive Secretary properly dismissed union's election objections where alleged bad faith bargaining conduct of employer just prior to decertification election was not of a nature that it would inherently have immediate impact on free choice and union failed to show that employees were made aware of conduct and that it was used in some way to undermine support for the union.
COKE FARMS, INC., 20 ALRB No. 15

324.02 Board affirms dismissal of objection alleging that union agents paid money for employee support and votes, because not supported by a declaration signed under penalty of perjury.
CALIFORNIA REDI-DATE, INC., 20 ALRB No. 11

324.02 Objections relating to campaigning in the polling area and photographing of voters were properly dismissed, because it was not clear the conduct took place in quarantine area, the activity was brief and noncoercive, and it ended quickly after Board agent's request. Further, there was no evidence that photographing of voters interfered with free choice.
CALIFORNIA REDI-DATE, INC., 20 ALRB No. 11

324.02 Board's regulations squarely place on the objecting party the burden of establishing a prima facie case based on the supporting materials filed with the objections petition. The Board's regulations allow no amendments to the petition and the Executive Secretary has no duty to conduct any further investigation or to sua sponte search Board files for any cases involving the same parties that might contain relevant information. Therefore, Board

would not consider newly furnished materials attached to request for review offered to show that Executive Secretary should have applied the stricter party standard, rather than the third party standard, in evaluating the alleged pre-election misconduct.
MONTEREY MUSHROOMS, INC., 21 ALRB No. 2

324.02 IHE properly disallowed litigation of allegations objecting party may have intended to be a part of objection set for hearing, where Executive Secretary and Board had in previous orders discussed and dismissed those allegations in the context of discussing other numbered objections.
OCEANVIEW PRODUCE CO., 21 ALRB No. 1

324.02 Party not entitled to a hearing on its peak objection where it failed to present prima facie case that RD's peak determination was not a "reasonable one in light of the information available at the time of the investigation."
Scheid Vineyards and Management Co. v. ALRB, (1994) 22 Cal. App. 4th 139 [27 Cal.Rptr.2d 36], affirming 19 ALRB No. 1

324.02 Board will not disturb Executive Secretary's dismissal of election objections where request for review did not comply with requirements of Regulation 20393(a) because it failed to specify grounds for overruling the Executive Secretary or provide evidence or legal argument in support of the request, and where Executive Secretary's analysis on its face shows no deficiencies.
VCNM FARMS, 21 ALRB No. 9

324.04 Time For Filing Or Serving Objections

324.04 Even where the final outcome of balloting is not immediately known, all parties are bound by the section 1156.3(c) requirement that election objections be filed within five days of the election.
OCEANVIEW PRODUCE CO. 20 ALRB No. 16 (1994)

324.04 Because Employer failed to comply with regulatory requirements for filing by FAX, it would be

appropriate to dismiss its request for review of dismissal of election objections as untimely filed. However, Board affirms dismissal of the objections on substantive grounds, as well.
CALIFORNIA REDI-DATE, INC., 20 ALRB No. 11

325.00 CHALLENGED BALLOT PROCEDURE

325.04 Scope Of Investigation; Need For And Sufficiency Of Exceptions; Burden Of Proof

325.04 Scope Of Investigation; Need For And Sufficiency Of Exceptions; Burden Of Proof

325.04 Where neither voters nor parties respond to Regional Director's requests for evidence to remove concerns as to identity of voters challenged for failure to present any identification, the Board sustained the Regional Director's recommendation that the challenges be sustained. Letter from Regional Director to voters requested them to contact Regional Office or Board agent in charge of investigation, and none did so.
OCEANVIEW PRODUCE COMPANY, 20 ALRB No. 10

325.04 The party filing exceptions to a challenged ballot report has the burden to provide sufficient evidence to create a material dispute and conclusory statements or assertions are not sufficient to do so. Mere statement that challenged voters worked during eligibility period is insufficient to meet that burden.
SIMON HAKKER, 20 ALRB No. 6

325.05 Hearing, Need For; Conduct Of Hearing Or Investigation

325.05 Where declarations submitted with exceptions raised issues as to Regional Director's factual findings supporting his recommendation to sustain the challenges to ballots cast by surqueros, the Board ordered the surqueros' supervisory status to be determined by investigative hearing officer if their challenged ballots are determinative following the revised tally from the counting of overruled challenges.

OCEANVIEW PRODUCE COMPANY, 20 ALRB No. 10

326.00 UNIT CLARIFICATION PROCEDURE

326.01 In General

326.01 Board declined to entertain joint petitions for unit clarification filed by two nominally separate entities who alleged that because they were in fact a single employer at time Unit Clarification petitions filed, as well as at time of election, the certified representative at the most recently certified unit should be invalidated and those employees be consolidated within a statewide unit previously certified and represented by a different union. Such a result would effectively require the Board to decertify one union and chose a different union to represent those same employees, all outside the Act's election process and without benefit of employee free choice.
OCEANVIEW PRODUCE, et al., 22 ALRB No. 15

326.01 Employer's attempt to have Board nullify a certification (effectively a decertification) on grounds employees were part of a single employing statewide entity already represented by a different union raised a question concerning representation and therefore could not be resolved by means of the unit clarification process.
OCEANVIEW PRODUCE, et al, 22 ALRB No. 15

326.01 Employer who failed to assert objection to unit at any stage of representation proceeding and never engaged in technical refusal but instead recognized and bargained with certified representative held to have waived right to contest unit appropriateness two years later by means of unit clarification petition.
OCEANVIEW PRODUCE, et al., 22 ALRB No. 15

327.00 EXTENSION OF CERTIFICATION PROCEDURE

327.01 In General

327.01 Petition for extension of certification filed under 1155.2(b) is denied because it was filed outside

statutory window period when such petitions may be filed, and because it fails to comply with regulatory requirement that petition must be filed under oath. (Cal. Code Regs., tit. 8, §20382.) P-H RANCH, INC., 20 ALRB No. 18

327.01 Board cannot extend certification under 1155.2(b) without making a finding that employer has not bargained in good faith. (Yamada Bros. v. ALRB (1979) 99 Cal.App.3d 112.) Since union's petition consists merely of unsworn hearsay allegations, Board has no facts from which to make such a finding, and thus must dismiss the petition. P-H RANCH, INC., 20 ALRB No. 18

405.00 THREAT OF PROMISE, WHAT CONSTITUTES

405.05 Reduction or Loss of Wages, Hours, Overtime, Benefits or Privileges etc., Threatened or Actual

405.05 Employer violated 1153(a) by threatening employees with loss of benefits if they supported the union. The standard is not whether the employees felt threatened, but whether Employer's conduct may reasonably be said to tend to interfere with the free exercise of employees' rights under the ALRA. P.H. RANCH, INC. (1996) 22 ALRB No. 1

405.07 Promise Or Granting Of Wage Increase, Promotion, Benefits, Privileges, Etc.

405.07 Employer violated 1153(a) by promising employees more money if they agreed to support the Employer in upcoming election. P.H. RANCH, INC. (1996) 22 ALRB No. 1

414.00 DISCRIMINATION

414.00 EMPLOYER DISCRIMINATION IN REGARD TO EMPLOYMENT

414.01 In General; Labor Code Section 1153(c); Elements Of Prima Facie Case

414.01 Prima facie case rebutted where employer demonstrated that employee would have been discharged in any event due to violation of company

policy on unexcused absences.
D'ARRIGO BROTHERS COMPANY OF CALIFORNIA 21 ALRB No. 5

414.03 Burden Of Proof; Weight Of Evidence

414.03 Employer violated 1153(c) and (a) by discharging employee who was accused of failing to milk a cow. Abundant evidence showed that he would not have been discharged in the absence of his union activity.
P.H. RANCH, INC. (1996) 22 ALRB No. 1

416.00 REFUSAL TO HIRE, OR DISCOURAGING HIRE OF UNION MEMBERS OR SYMPATHIZERS

416.01 In General

416.01 Where Employer treats applicants for rehire in discriminatory manner (e.g., by discouraging them from applying or by not considering their applications equally with those of other employees), a discrim-inatory refusal to rehire may be shown without necessity of showing work was available at the very time of application.
IMPERIAL ASPARAGUS FARMS, INC., 20 ALRB No. 2

416.01 Employer's claim that employees sought rehire at times when no work was available rejected where Board found that employer had altered established hiring policies in order to avoid rehiring employees who had engaged in protected work stoppage in prior season; employees sought rehire at appropriate times and would have been given work had the declared policy remained in effect.
TANIMURA & ANTLE, INC., 21 ALRB No. 12

416.03 Former Employees; Seasonal Workers

416.03 Where Employer treats applicants for rehire in discriminatory manner (e.g., by discouraging them from applying or by not considering their applications equally with those of other employees), a discrim-inatory refusal to rehire may be shown without necessity of showing work was available at

the very time of application.
IMPERIAL ASPARAGUS FARMS, INC., 20 ALRB No. 2

416.03 Evidence established that Employer refused to rehire employee because of her union activities where employee's activities were open and obvious, Employer's supervisor falsely denied knowledge of the activities, and Employer made unsubstantiated allegations that employee (who had nine years' experience with Employer) was slow and unproductive. SCHEID VINEYARDS AND MANAGEMENT COMPANY, INC., 21 ALRB No. 10

416.04 Strikers, Refusal To Reinstate

416.04 Refusal to reinstate strikers unlawful where employer failed to prove strikers were permanently replaced and where separation agreement signed by some strikers found unenforceable because not a clear and unmistakable waiver, against public policy, and lacked consideration; There are no time limits on the reinstatement rights of economic strikers, therefore the employer's failure to follow the recall list after one year unlawful.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

417.00 DISCHARGE AND LAYOFFS

417.01 Discharge In General

417.01 Employees were engaged in protected concerted activity when they refused to sign (and urged other employees not to sign) employer's attendance form which appeared to document their participation in a safety training meeting, although no such meeting had taken place. Employees' actions were reasonable under the circumstances, and employer's discharge of them for their refusal to sign and urging other employees not to sign violated section 1153(a).
OCEANVIEW PRODUCE COMPANY, 21 ALRB No. 8

417.01 General Counsel established that Employer laid off and discharged crew because of its protected concerted activity where, after crew's wage protest and strike, Employer refused to reinstate crew to its status as preferred corn harvesting crew, but

instead employed other crews with less experience.

GOLDEN ACRE FARMS, INC., 22 ALRB No. 14

417.02 What Constitutes A Discharge; Layoff Distinguished

417.02 In determining whether or not a striker has been discharged, the test to be used is whether the words or conduct of the employer reasonably led the strikers to believe they were discharged and the employer has the burden of resolving any ambiguity created by its conduct. Where employer tells strikers to go home, employees indicate that they believe they have been discharged by asking for immediate payment of unpaid wages, employer indicates on termination form that employees were insubordinate for refusing to work, and employer is unwilling to rehire any of the workers, employees reasonably believed that they had been discharged, and did not voluntarily quit their employment. DOLE FARMING, INC., 22 ALRB No. 8

417.02 Employees' refusal to work for a portion of one day protected where they discussed their mutual concerns about the difficulty of working in unseasonably hot weather. Board cites NLRB cases where, under similar circumstances in which employees perceived discomfort or danger in working under unique or adverse working conditions, work stoppage was deemed a spontaneous and limited one-time event and thus was not an unprotected "partial strike." TANIMURA & ANTLE, INC., 21 ALRB No. 12

417.02 A discharge is established by the words and actions of the employer. Discriminatory discharge established where, as here, credited testimony attributed to employer statements, in response to concerted demands for changes in wages and hours, which reasonably led employees to believe that they had been discharged ("go home," "no more work for you," "the increase is at home"). (Citing American Protection Industries, et al. (1991) 17 ALRB No. 21, ALJ Sec., p. 18; Ridgeway Trucking Co. (1979) 243 NLRB 1048 [101 LRRM 1561], enf'd (5th Cir., 1980) 622 F.2d 1222.) Having made statements that the employees reasonably could have taken as indicating

a discharge, it was incumbent upon the Employer, if he did not intend to fire the employees, to clarify the situation.
BOYD BRANSON FLOWERS, INC., 21 ALRB No. 4

417.03 Constructive Discharge

417.03 No discharge where record shows that employee voluntarily relinquished his job due to perceived obligation to support strike.
TAYLOR FARMS, 20 ALRB No. 8

419.00 CHARGE IN OR DISCONTINUANCE OF OPERATIONS FOR DISCRIMINATORY REASONS

419.05 Transfer, Promotion, Or Demotion; Work Assignments And
Work Opportunities

419.05 Evidence established that known union activist, who was twice singled out by management personnel for one-on-one displays of anti-union animus, was denied tractor driving work because of his protected concerted activities.
Scheid Vineyards and Management Company, Inc., 21 ALRB No. 10

419.13 Eviction From Company Housing

419.13 Filing of unlawful detainer actions against strikers not shown to be retaliatory where evidence shows that action taken because right to housing was condition of employment which ceased upon going out on strike.
TAYLOR FARMS, 20 ALRB No. 8

420.00 REASONS FOR DISCIPLINE, DISCHARGE, OR REFUSAL TO REINSTATE

420.01 In General

420.01 Employer's claim that employees' refusal to work one afternoon assertedly because of an adverse working condition (extreme heat) constituted a voluntary quit or alternatively an act of insubordination, rejected where employees' conduct found to be

protected.
TANIMURA AND ANTLE, INC. 21 ALRB NO. 12

420.06 Altercations With Others; Fighting; Violence

420.06 Discharge of strikers upheld where employer showed good faith belief that individuals threw rocks at vehicles and General Counsel failed to establish that the misconduct did not take place; Discharge of striker not upheld where General Counsel successfully established by a preponderance of evidence that striker did not throw rock as alleged; Discharge of strikers not upheld where employer failed to show good faith belief by offering as evidence only letter containing vague accusation of misconduct on unspecified date, without any corroboration or identification of a witness.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

420.12 Insubordination

420.12 Employees were engaged in protected concerted activity when they refused to sign (and urged other employees not to sign) employer's attendance form which appeared to document their participation in a safety training meeting, although no such meeting had taken place. Employees' actions were reasonable under the circumstances, and employer's discharge of them for their refusal to sign and urging other employees not to sign violated section 1153(a).
OCEANVIEW PRODUCE COMPANY, 21 ALRB No. 8

420.12 Employer's claim that employees sought rehire at times when no work was available rejected where Board found that employer had altered established hiring policies in order to avoid rehiring employees who had engaged in protected work stoppage in prior season; employees sought rehire at appropriate times and would have been given work had the declared policy remained in effect.
TANIMURA & ANTLE, INC., 21 ALRB No. 12

420.15 Low Production Or Impending Production; Negligence Inefficiency Or Incompetence

420.15 Evidence established that Employer refused to rehire employee because of her union activities where employee's activities were open and obvious, Employer's supervisor falsely denied knowledge of the activities, and Employer made unsubstantiated allegations that employee (who had nine years' experience with Employer) was slow and unproductive. Scheid Vineyards and Management Company, Inc.,

420.20 Company Rules Generally; Successive Violation Of Rules

420.20 Prima facie case rebutted where employer demonstrated that employee would have been discharged in any event due to violation of company policy on unexcused absences.
D'ARRIGO BROTHERS COMPANY OF CALIFORNIA 21 ALRB No. 5

421.00 BACKGROUND CIRCUMSTANCES INDICATING OR REBUTTING DISCRIMINATION IN DISCIPLINE, DISCHARGE, LAYOFF, OR REFUSAL TO REINSTATE

421.10 No Reason, False, Or Inconsistent Reasons Given For Dismissal

421.10 Supervisor's admission that she would not rehire employees "because of what they had done," owner's admission that one employee was not rehired because of his association with two others who engaged in protected concerted activity, as well as Employer's shifting reasons offered to explain refusals to rehire, all support conclusion that the employees would not have been denied rehire in the absence of their protected concerted activity.
IMPERIAL ASPARAGUS FARMS, INC., 20 ALRB No. 2

421.16 Replacement Of Employees; Labor Shortage Or Busy Season; Key Employees

421.16 Employer met burden to prove substantial and legitimate business justification for failure to immediately reinstate economic strikers who unconditionally offered to return to work by showing mutual understanding that replacement workers were permanent and that, after offer to return, openings

were thereafter filled with returning strikers. Not necessary to show that offer of permanent employment was necessary in order for employer to obtain sufficient number of replacements.
TAYLOR FARMS, 20 ALRB No. 8

421.16 Temporary work that was contracted out in accordance with past practice was not work that had to be offered to economic strikers on preferential hiring list.
TAYLOR FARMS, 20 ALRB No. 8

421.23 Employee Quit Voluntarily

421.23 In determining whether or not a striker has been discharged, the test to be used is whether the words or conduct of the employer reasonably led the strikers to believe they were discharged and the employer has the burden of resolving any ambiguity created by its conduct. Where employer tells strikers to go home, employees indicate that they believe they have been discharged by asking for immediate payment of unpaid wages, employer indicates on termination form that employees were insubordinate for refusing to work, and employer is unwilling to rehire any of the workers, employees reasonably believed that they had been discharged, and did not voluntarily quit their employment.
DOLE FARMING, INC., 22 ALRB No. 8

421.23 Employees who are told that they must resign in order to receive needed benefits have not clearly or unmistakably expressed a desire to relinquish statutory reinstatement rights.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

421.23 Defense that employees voluntarily quit rejected and discriminatory discharge established where credited testimony indicated that employer made statements in response to concerted demands for changes in wages and hours which employees reasonably believed to indicate that they had been discharged.
BOYD BRANSON FLOWERS, INC., 21 ALRB No. 4

423.00 CONCERTED ACTIVITIES; PROTECTED ACTIVITIES

423.01 In General

423.01 Employer's claim that employees' refusal to work one afternoon, assertedly because of an adverse working condition (extreme heat), constituted a voluntary quit or, alternatively, an act of insubordination, rejected where employees' conduct found to be protected.
TANIMURA & ANTLE, INC., 21 ALRB No. 12

423.01 Employees' refusal to work for a portion of one day protected where they discussed their mutual concerns about the difficulty of working in unseasonably hot weather. Board cites NLRB cases where, under similar circumstances in which employees perceived discomfort or danger in working under unique or adverse working conditions, work stoppage was deemed a spontaneous and limited one-time event and thus was not an unprotected "partial strike."
TANIMURA & ANTLE, INC., 21 ALRB No. 12

423.01 The protected status of concerted demands concerning wages or working conditions does not depend on the reasonableness of the demands. (Giannini Packing Corp. (1993) 19 ALRB No. 16, ALJ dec., p. 15.) However, activity that would otherwise be protected may nonetheless lose its protected status only if it is unlawful, violent, in breach of contract, or indefensibly disloyal. (See, generally, Hardin, The Developing Labor Law, 3rd Ed., p. 137; Nash-DeCamp Co. v. ALRB (1983) 146 Cal.App.3d 92, 105.)
BOYD BRANSON FLOWERS, INC., 21 ALRB No. 4

423.01 Employer's claim that employees' refusal to work one afternoon, assertedly because of an adverse working condition (extreme heat), constituted a voluntary quit or, alternatively, an act of insubordination, rejected where employees' conduct found to be protected.
TANIMURA & ANTLE, INC., 21 ALRB No. 12

423.07 Wage Demands; Demands For Change In Working Conditions

423.07 Employees were engaged in protected concerted activity when they complained to supervisor about not receiving their paychecks, complained to

supervisor and later to Labor Commissioner about not receiving overtime pay, and declined supervisor's request that they work on salary basis rather than for hourly wages.
IMPERIAL ASPARAGUS FARMS, INC., 20 ALRB No. 2

423.07 Demands concerning wages and hours made on behalf of self and 11 other employees who refused to begin working in support of demands constitutes protected concerted activity. The protected status of concerted demands concerning wages or working conditions does not
depend on the reasonableness of the demands. (Giannini Packing Corp. (1993) 19 ALRB No. 16, ALJ Dec., p. 15.)
BOYD BRANSON FLOWERS, INC., 21 ALRB No. 4

423.12 Mistake as to Employee's Activities

423.12 Employer's claim that employees' refusal to work one afternoon, assertedly because of an adverse working condition (extreme heat), constituted a voluntary quit or, alternatively, an act of insubordination, rejected where employees' conduct found to be protected.
TANIMURA & ANTLE, INC., 21 ALRB No. 12

424.00 STRIKES AND SLOWDOWNS: WORK STOPPAGES

424.01 In General

424.01 Sufficient evidence supported ALJ's conclusion that General Counsel failed to meet burden of proof that employees engaged in a strike rather than a resignation when they left premises. Before they left, most vocal employee said he would quit and take another job. Rather than seeking reinstatement, two of the employees first applied for unemployment insurance benefits, indicating on their application forms that reason for cessation of active employment was that they had quit (rather than indicating strike as the reason) and failing to disagree with the Employer's statement that they had quit.
NICHOLS FARMS, 20 ALRB No. 17

424.01 Employees' refusal to work for a portion of one day protected where they discussed their mutual concerns about the difficulty of working in unseasonably hot weather. Board cites NLRB cases where, under similar circumstances in which employees perceived discomfort or danger in working under unique or adverse working
conditions, work stoppage was deemed a spontaneous and limited one-time event and thus was not an unprotected "partial strike."
TANIMURA & ANTLE, INC., 21 ALRB No. 12

424.04 Means Of Conducting Strike: Illegal Means; Sitdown Strikes; Slowdowns; "Union Meetings;" Obstructive Tactics; Intermittent Work Stoppages; Partial Strikes

424.04 Single work stoppage that consisted of complete withholding of labor to protest wages, hours, and working conditions is protected and does not constitute a partial, intermittent, or recurrent strike.
DOLE FARMING, INC., 22 ALRB No. 8

424.07 Recall After Strike; Seniority And Job Rights Of Strikers, Nonstrikers, And Strike Replacements

424.07 Permanent replacement of economic strikers not established where employer failed to show mutual understanding of permanent status of replacement workers; Permanent replacement is an affirmative defense to reinstatement, and it is employer's burden to raise and establish such defense. It is not General Counsel's burden to identify all possible issues in the
case by anticipating and denying any affirmative defenses that the employer might raise.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

424.08 Strike Settlement Agreements

424.08 Where strikers were told they had to sign in order to get unemployment insurance benefits and vacation pay, separation agreement providing for strikers to resign and then have resignation converted to layoff to facilitate unemployment benefits, and for mutual

release of claims, unenforceable because not a clear and unmistakable waiver, against public policy, and lacked consideration.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

430.00 STRIKERS, PICKETING, AND BOYCOTTS: DISCHARGE; REFUSAL OF REINSTATEMENT, ETC.

430.02 What Constitutes A "Discharge" Of Strikers; Tactical Discharge; Quitting

430.02 In determining whether or not a striker has been discharged, the test to be used is whether the words or conduct of the employer reasonably led the strikers to believe they were discharged and the employer has the burden of resolving any ambiguity created by its conduct. Where employer tells strikers to go home, employees indicate that they believe they have been discharged by asking for immediate payment of unpaid wages, employer indicates on termination form that employees were insubordinate for refusing to work, and employer is unwilling to rehire any of the workers, employees reasonably believed that they had been discharged, and did not voluntarily quit their employment.
DOLE FARMING, INC., 22 ALRB No. 8

430.02 Strikers not discharged where evidence shows they did not believe they had been discharged and ranch manager asked them to return to work immediately after purported discharge by foreman.
S&S RANCH, INC., 22 ALRB No. 7

430.04 Application For Reinstatement, Sufficient; Individual Or Union Application

430.04 Discharged strikers need not make an unconditional offer to return to work because such an offer would be futile; Futility doctrine applies only where, as in discharges, the employment relationship is severed by actions of the employer, and does not apply where employees signed separation agreements which purported to constitute resignations, since in such circumstances the employees would not reasonably believe that an offer to return would be futile.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

430.04 Offer to return to work was on behalf of entire group of strikers congregated outside employer's office where three representatives said to the employer, "give us our jobs back to all of us."
S&S RANCH, INC., 22 ALRB No. 7

430.05 Replacement Of Strikers, Effect Of; Economic Or Unfair Practice Strikes

430.05 Temporary work that was contracted out in accordance with past practice was not work that had to be offered to economic strikers on preferential hiring list.
TAYLOR FARMS, 20 ALRB No. 8

430.05 Employer met burden to prove substantial and legitimate business justification for failure to immediately reinstate economic strikers who unconditionally offered to return to work by showing mutual understanding that replacement workers were permanent and that, after offer to return, openings were thereafter filled with returning strikers. Not necessary to show that offer of permanent employment was necessary in order for employer to obtain sufficient number of replacements.
TAYLOR FARMS, 20 ALRB No. 8

430.05 Permanent replacement of economic strikers not established where employer failed to show mutual understanding of permanent status of replacement workers; Permanent replacement is an affirmative defense to reinstatement, and it is employer's burden to raise and establish such defense. It is not General Counsel's burden to identify all possible issues in the case by anticipating and denying any affirmative defenses that the employer might raise.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

430.07 Termination Of Strike; Settlement Agreements; Voluntary Return To Work; Promise To Rehire Strikers

430.07 Where strikers were told they had to sign in order to get unemployment insurance benefits and vacation pay, separation agreement providing for strikers to

resign and then have resignation converted to layoff to facilitate unemployment benefits, and for mutual release of claims, unenforceable because not a clear and unmistakable waiver, against public policy, and lacked consideration.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

430.08 Reinstatement Offer; Substantially Equivalent Employment; Conditions To Or Delay In Reinstatement; Order Of Recall

430.08 Employer did not fail or refuse to reinstate returning economic strikers where personnel manager told strikers' representatives that she did not hire them and that they would have to go see their foreman (who was found to have the authority to hire).
S&S RANCH, INC., 22 ALRB No. 7

432.00 REFUSAL OF EMPLOYER TO BARGAIN COLLECTIVELY IN GOOD FAITH

432.00 REFUSAL TO BARGAIN IN GOOD FAITH

432.02 Refusal To Bargain For Purpose Of Obtaining Judicial Review; Technical Refusal To Bargain (see also section 463.03)

432.02 Board's finding that harvesting entity was a labor contractor rather than a custom harvester does not fall within the narrow exception to the prohibition against relitigation of representation issues in unfair labor practice proceedings. Such relitigation has been allowed only where it is determined that the certification was manifestly in error because the election was held in an atmosphere of fear and coercion.
SAN JOAQUIN TOMATO GROWERS, INC., 20 ALRB No. 13

432.02 Employer's arguments that IHE's credibility 463.03 determinations should be overruled, that non-party conduct should be attributed to union, that testimony of witnesses' subjective feelings and reactions should have been admitted, and that uncredited incidents of alleged threats and violence should have caused Board to set aside election, do

not indicate a reasonable, good-faith litigation posture. Therefore, makewhole remedy is appropriate.
ACE TOMATO CO., INC., 20 ALRB No. 7

432.03 Persons Required To Bargain; Purchaser Or Transferee; "Successors"; Affiliated Companies

432.03 Since bargaining obligation of an employer who purchased and continued to operate the whole of a predecessor's operations applies to all employees in the certified unit, employer cannot refuse to bargain concerning employees in a specific crop operation on grounds original unit no longer exists due to changes in overall acreage, kinds of crops produced, or employee turnover.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

434.00 MEETINGS AND AUTHORITY TO NEGOTIATE

434.03 Refusal Of Employer To Meet, Or Delay In Arranging Meetings

434.03 Employer unlawfully refused to bargain by failing to respond to repeated inquiries from union after mediation sessions, where it was unreasonable for employer to insist on contact only through mediator, as parties had agreed to resume direct contact and union made it known through phone contacts and filings with the Board that it sought further negotiations, and parties were not at impasse.
P.H. RANCH, INC., et al., 21 ALRB No. 13

434.03 Except where there is an unrepudiated agreement that all contact must be through the mediator, whether such agreement is express or reasonably may be inferred from the conduct of the parties, a party may not use the existence of a mediator as an excuse to ignore efforts by the other party to resume direct contacts or negotiations.
P.H. RANCH, INC., et al., 21 ALRB No. 13

436.00 INFORMATION TO UNION; DATA FOR BARGAINING OR CONTRACT ADMINISTRATION

436.01 In General; Relevance Of Information To Collective

Bargaining

436.01 Information re: wage rates, hours worked by employees, and profit sharing plan is presumptively relevant and belief that union could formulate proposals without information is not a sufficient defense to failure to provide such information.
P.H. RANCH, INC., et al., 21 ALRB No. 13

436.02 Delay Or Refusal To Provide Information As Unfair Labor
Practice

436.02 Information re: wage rates, hours worked by employees, and profit sharing plan is presumptively relevant and belief that union could formulate proposals without information is not a sufficient defense to failure to provide such information.
P.H. RANCH, INC., et al., 21 ALRB No. 13

436.04 Wages And Salary Data In General; Individual Wage Rates

436.04 Information re: wage rates, hours worked by employees, and profit sharing plan is presumptively relevant and belief that union could formulate proposals without information is not a sufficient defense to failure to provide such information.
P.H. RANCH, INC., et al., 21 ALRB No. 13

438.00 UNILATERAL ACTION; UNDERCUTTING UNION'S AUTHORITY

438.01 Unilateral Action In General; Per Se Rule

438.01 Neither an employer's motivation nor the effect of a unilateral change (i.e., harm) is relevant because unilateral changes in mandatory terms and conditions of employment are per se violations of the duty to bargain.
WARMERDAM PACKING, 22 ALRB No. 13

438.01 Even unilateral changes which are beneficial to employees are per se violations because such changes undermine the union's position in the eyes of its members and cause them to wonder if they really need a union.

WARMERDAM PACKING, 22 ALRB No. 13

438.01 Irrelevant whether unilateral changes are de minimis as only test is whether there was a change, not the nature or scope or effect of the change. Moreover, the effect of a change, even one that inures to employees' benefit, will not negate bargaining obligation.
WARMERDAM PACKING, 22 ALRB No. 13

438.01 U.S. Supreme Court's Katz per se unilateral change rule has been applied to numerous post-Katz factual situations and therefore need not be limited to merit wage increase cases.
WARMERDAM PACKING, 22 ALRB No. 13

438.02 Prior Notice Or Consolation; Pro-Forma Bargaining

438.02 Where employer announces change in working conditions as a decision which effectively has already been made and implemented, no genuine bargaining can take place.
WARMERDAM PACKING, 22 ALRB No. 13

438.05 Discharge, Layoff, Reinstatement, Seniority, Transfers,
Promotions, Work Assignments, Job Classifications; Work
By Supervisors

438.05 Employer did not violate its duty to bargain by failing to give notice to union before reducing single employee's work hours and eliminating his tractor driving duties.
SCHEID VINEYARDS AND MANAGEMENT CO., INC, 21 ALRB No. 10

438.05 End-of-season layoffs of employees constituted an unlawful unilateral change, since the layoffs involved considerable discretion and thus required notification to the union and provision of the opportunity to bargain over implementation of the

employer's layoff policy.
Scheid Vineyards and Management Company, Inc.,
21 ALRB No. 10

438.05 Employer violated its duty to bargain by unilaterally instituting a new policy requiring minimum of 400 hours' pruning experience over prior two years.
Scheid Vineyards and Management Company, Inc.,
21 ALRB No. 10

438.05 Hiring of new, local employees instead of recalling regular employees by classification seniority constituted an unlawful unilateral change in hiring practices.
Scheid Vineyards and Management Company, Inc.,
21 ALRB No. 10

438.06 Hiring Practices; Use Of Labor Contractors

438.06 Hiring of labor contractor for grape harvest was an unlawful unilateral change in hiring practices, since Employer had used labor contractor during harvesting only once in previous 20 years.
Scheid Vineyards and Management Company, Inc.,
21 ALRB No. 10

438.18 Work Schedules, Change In; Speedup

438.18 Employer did not violate its duty to bargain by failing to give notice to union before reducing single employee's work hours and eliminating his tractor driving duties. Such relatively minor changes have no generalized effect on the bargaining unit.
Scheid Vineyards and Management Company, Inc.,
21 ALRB No. 10

438.18 Employer did not violate its duty to bargain by failing to give notice to union before reducing single employee's work hours and eliminating his tractor driving duties. Such relatively minor changes have no generalized effect on the bargaining unit.

Scheid Vineyards and Management Company, Inc.,
21 ALRB No. 10

439.00 DEFENSES TO CHARGE OF REFUSAL TO BARGAIN

439.04 Business Necessity; Competitive Or Financial Position Of Employer

439.04 Limited "exigent circumstance" exception to duty to notify and bargain before implementing changes in working conditions must be very narrowly construed and employer has heavy burden to show "extraordinary events which are `an unforeseen occurrence, having a major economic effect [requiring]...immediate action'" and, further, that situation required prompt action, changes were compelled, dictated by external events, beyond employer's control or not reasonably foreseeable.
WARMERDAM PACKING, 22 ALRB No. 13

439.04 "Business necessity" not the same as compelling considerations which may excuse bargaining.
WARMERDAM PACKING, 22 ALRB No. 13

439.07 Past Practice; Maintenance Of Status Quo

439.07 Unprecedented, irregular, and therefore unpredictable nature of changes in working conditions suggest they were the "product of an ad hoc decision-making process rather than a continuation of an established company policy" and therefore cannot serve to justify changes in hiring policy absent prior notification and bargaining with union.
WARMERDAM PACKING, 22 ALRB No. 13

439.07 Combination of short history and indefinite nature of the alleged past practice fatal to employer's claim of past practice to defend post-certification changes in hiring policies.
WARMERDAM PACKING, 22 ALRB No. 13

439.09 Management-Rights Clause, Effect Of

439.09 Employer who defends failure to bargain on grounds of waiver bears heavy burden of showing first that

it formally and fully apprised union of its intent to take action affecting employment terms and union, having been given meaningful opportunity to bargain, declined.
WARMERDAM PACKING, 22 ALRB No. 13

439.09 A union's past practice of permitting unilateral changes does not constitute waiver of right to bargain over such changes in future.
WARMERDAM PACKING, 22 ALRB No. 13

439.09 Test of waiver is not extent to which union sought bargaining as waiver may not be inferred even from silence.
WARMERDAM PACKING, 22 ALRB No. 13

439.11 Impasse

439.11 No impasse shown where union had made concessions in mediation and sought further meetings and where parties had not yet exhaustively bargained over core economic issues.
P.H. RANCH, INC., et al., 21 ALRB No. 13

439.13 Abandonment Of Unit

439.13 Section 1156.2 precludes Board from modifying original certification in order to sever out only a certain classification of employees on grounds union abandoned interest in representing only that aspect of the overall operation.
DOLE FRESH FRUIT CO. 22 ALRB No. 4

439.13 Board rejects employer's claim that duty to bargain concerning grape employees had been extinguished on grounds union had abandoned them where evidence established that union's repeated claims to bargain had been rebuffed, where union took worksite access to solicit union membership, and union held rallies among area grape workers to urge them to press for a general wage increase.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

439.13 In assessing allegation that employer need not bargain with certified representative on grounds union abandoned employees, issue is not extent of union/management contact, which may have been

lacking, but union/employees contact which continued to take place.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

439.13 Stalled negotiations, or even a hiatus in negotiations, cannot alone be the basis for refusing to bargain on the grounds the union is unable or unwilling to represent unit employees since an absence of negotiations need not necessarily translate into a disclaimer of interest.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

440.00 MAJORITY STATUS OF UNION; RECOGNITION

440.01 In General, Bargaining With Uncertified Union, Labor Code Section 1153(f)

440.01 Board follows NLRB presumption that new employees support the union in the same ratio as when majority support was first manifested and certified representative is obliged to bargain not only for employees who voted for it but for all employees in the bargaining unit.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

440.02 Employer's Right To Contest Majority; Loss Of Majority In General; Effect Of Unfair Labor Practices

440.02 A union's failure to timely file an unfair labor practice charge against an attempted withdrawal of recognition cannot make the withdrawal effective where the statutory scheme does not permit such actions by employers.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

440.05 Abandonment Of Unit

440.05 Board rejects employer's claim that duty to bargain concerning grape employees had been extinguished on grounds union had abandoned them where evidence established that union's repeated claims to bargain had been rebuffed, where union took worksite access to solicit union membership, and union held rallies among area grape workers to urge them to press for a

general wage increase.
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440.05 In assessing allegation that employer need not bargain with certified representative on grounds union abandoned employees, issue is not extent of union/management contact, which may have been lacking, but of union/employee contact which continued to take place.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

440.05 Stalled negotiations, or even a hiatus in negotiations, cannot alone be the basis for refusing to bargain on the grounds the union is unable or unwilling to represent unit employees since an absence of negotiations need not necessarily translate into a disclaimer of interest.
DOLE FRESH FRUIT CO., 22 ALRB No. 4

449.00 PROCEDURE IN UNFAIR LABOR PRACTICE AND COMPLIANCE CASES

449.01 In General

449.01 Where ALJ adopts own backpay methodology after rejecting those proffered by General Counsel and respondent, and where respondent did not have an adequate opportunity to offer evidence to rebut reasonableness of ALJ's methodology, remand is appropriate to allow respondent such opportunity.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

449.03 Allocation Of Burden Of Proof In ULP And Compliance Proceedings

449.03 Uncertainties in the calculation of backpay will be resolved against the wrongdoing party, whose unlawful conduct created the uncertainties.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

449.03 Where Board order requires respondent to reinstate discriminatee by assigning him irrigation work in same manner as prior to discrimination, it is not General Counsel's burden to prove that each irrigation assignment was denied for discriminatory reasons; rather, it was respondent's burden to show legitimate reasons why available assignments were not given to discriminatee.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

450.00 CHARGE

450.01 In General; Supporting Allegations

450.01 Marketing commission (Table Grape) is not empowered by its enabling statute, the Ketchum Act, to file unfair labor practice charges, therefore, it has no standing under ALRA to file such charges.
UFW v. *ALRB (Table Grape Commission)*, 41 Cal. App. 4th 303 [48 Cal.Rptr.2d 696](setting aside *UFW (Table Grape Commission)* (1993) 19 ALRB No. 15)

452.00 COMPLAINT OR SPECIFICATION

452.01 In General

452.01 Issuance of notice of hearing on derivative liability appropriate even though General Counsel may have known of existence and role of partnership and general partner earlier in unfair labor practice proceeding. General Counsel does not have to proceed against all entities that may ultimately be liable to remedy unfair labor practices at time of earliest knowledge of their relationship with original respondent.
Claassen Mushrooms, Inc. 20 ALRB No. 9

452.09 Service Of Charge, Complaint, Or Specification; Labor Code Section 1151.4

452.09 Service was effected when Respondent refused to accept or failed to claim certified mail. Where service by mail is permitted by statute, service is established by postal service entries on returned certified mail showing notices of attempts to

deliver, and that document being served was either refused or returned unclaimed.
VALLEY FARMING COMPANY 20 ALRB No. 4

452.10 Parties To Charge, Complaint, Or Specification

452.10 Marketing commission (Table Grape) is not empowered by its enabling statute, the Ketchum Act, to file unfair labor practice charges, therefore, it has no standing under ALRA to file such charges.
UFW v. *ALRB (Table Grape Commission)*, 41 Cal. App. 4th 303 [48 Cal.Rptr.2d 696] (setting aside *UFW (Table Grape Commission)* (1993) 19 ALRB No. 15)

452.10 Entities which may be derivatively liable may be named in a derivative liability proceeding initiated after the unfair labor practice and original compliance hearing.
Claassen Mushrooms, Inc. 20 ALRB No. 9

452.13 Default Or Failure To Appear

452.13 Where one respondent defaults, Board has discretion whether or not to issue a final order in the nature of a default judgment. Respondent who defaults in a compliance proceeding may be entitled to the benefit of any adjudication involving other respondents that results in the reduction of the amount of backpay alleged in the specification. However, any reduction or elimination of liability that rests on a theory peculiar to the non-defaulting respondent(s) will not relieve the defaulting respondent of any of the terms of the specification as issued.
BRIGHTON FARMING CO., INC. AND FELIZ VINEYARD, INC., 20 ALRB No. 20

452.13 Failure to file an answer to complaint or specification permits Board to enter summary judgment finding violation and amount of backpay due.
VALLEY FARMING COMPANY 20 ALRB No. 4

453.00 HEARINGS

453.02 Notice And Opportunity For Hearing; Summary

Judgement

453.02 No prejudice where General Counsel's first indicated in subpoena after prehearing conference that it intended to call as witnesses various managerial and supervisorial personnel which the employer had already included on its list of witnesses, and where subpoena served on employer several weeks before hearing.
DOLE FARMING, INC., 22 ALRB No. 8

453.02 Prehearing Conference Order does not have the legal effect of a stipulation and some variance between testimony and summary of facts in order, as long as it does not constitute surprise as to the material issues in dispute, is both expected and permissible.

DOLE FARMING, INC., 22 ALRB No. 8

453.03 Conduct Of Hearing; Fair Hearing; Bias; Disqualification Of ALJ; Right To Appear; Power Of ALJ To Control Hearing

453.03 ALJ's denial of continuance at end of hearing where party did not show why witness could not be located earlier with exercise of due diligence and ALJ's cutting off of lines of questioning where testimony was cumulative or not leading to relevant information is consistent with ALJ's authority to control hearing and is not evidence of bias. ALJ's communication of reservations as to validity of separation agreement ending strike not evidence of bias.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

453.04 Continuance

453.04 ALJ's denial of continuance at end of hearing to call additional witness, where party did not show why witness could not be located earlier with exercise of due diligence, not improper or indicative of bias.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

455.00 ADMINISTRATIVE LAW JUDGES' DECISIONS

455.03 Weight To Be Given Administrative Law Judges' Findings In General; Credibility Resolutions; Failure Of ALJ To Meet Minimum Standards

455.03 Credibility determination based not on demeanor but on plausibility of employees' testimony overruled by Board where review of record as a whole convinces Board that employer's version of disputed conversation is more plausible.
S&S RANCH, INC., 22 ALRB No. 7

455.03 The Board will not disturb credibility determinations, particularly where they are based largely on demeanor and are supported by a careful evaluation of the consistency of the relevant testimony and its plausibility in light of known facts.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

455.03 Where ALJ's credibility determinations are not based on demeanor, but on such things as reasonable inferences, the consistency of witness testimony, plausibility of the testimony in light of other evidence and of common experience, or the presence or absence of corroboration, the Board may overrule such determinations where they conflict with well supported inferences from the record considered as a whole.
S&S RANCH, INC., 22 ALRB No. 7

456.00 DISCOVERY

456.01 In General

456.01 Board declines to impose sanctions on employer for tardy compliance with discovery rules, since no prejudice to General Counsel was shown.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

456.01 Executive Secretary did not abuse his discretion under Regulation §20246 in denying request to take deposition where party failed to make required showing that witness would be unavailable for

hearing.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

456.03 Giumarra

456.03 Claim that the rule of Giumarra Vineyards Corp. (1977) 3 ALRB No. 21 prevents a respondent from having an opportunity to prepare an adequate defense and allows the General Counsel to withhold exculpatory evidence was considered and rejected in Giumarra, as well as in numerous cases involving the NLRB, which has the same restrictions on discovery. Therefore, Board declines to revisit this well-settled issue.
DOLE FARMING, INC., 22 ALRB No. 8

458.00 REMEDIES FOR ULPS

458.01 Scope Of Orders And Authority Of Board In General

458.01 Any employees are entitled to claim backpay who can demonstrate in compliance proceedings that they would have been recalled if Employer had not unilaterally changed its work experience requirements. Remedy is not limited to those named in the complaint.
Scheid Vineyards and Management Company, Inc., 21 ALRB No. 10

459.00 REINSTATEMENT AND BACKPAY

459.01 In General
459.01 Any employees are entitled to claim backpay who can demonstrate in compliance proceedings that they would have been recalled if Employer had not unilaterally changed its work experience requirements. Remedy is not limited to those named in the complaint.
Scheid Vineyards and Management Company, Inc., 21 ALRB No. 10

459.01 Where respondent had been ordered to reinstate discrim-inatee by assigning him irrigation work in same manner as it did prior to discrimination, discriminatee's status as irrigator of last resort

constitutes failure to reinstate.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

459.09 Availability Of Work; Reduction In Workforce Or Elimination Of Jobs As Affecting Reinstatement

459.09 Where Board order requires respondent to reinstate discriminatee by assigning him irrigation work in same manner as prior to discrimination, it is not General Counsel's burden to prove that each irrigation assignment was denied for discriminatory reasons; rather, it was respondent's burden to show legitimate reasons why available assignments were not given to discriminatee.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

459.09 Irrigators need not be displaced in favor of discriminatee with regard to regular assignments they had prior to discrimination, but this did not provide legitimate reason for not giving assignments to discriminatee on days someone other than regular irrigators performed the work.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

459.09 Finding that ranch owner preferred other irrigator over discriminatee is not legitimate reason for failing to give discriminatee the assignment once other irrigator removed from assignment.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

459.09 Assertion that regular irrigation assignments not given to discriminatee to avoid liability for employees operating own vehicles on public highways during work hours does not provide legitimate defense to reinstatement where there was no showing that no other employees drive their own vehicles nor an explanation given as to why this was not a concern prior to the discrimination.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

459.14 Effect of Immigration Laws On Compliance

459.14 Board correctly found that "dual status" employer, i.e., farmer who also provided labor to other farmers, was not a "labor contractor" as defined under MSPA, and was thus not subject to MSPA's

prohibition on the hiring of undocumented aliens by labor contractors. Therefore, MSPA did not preempt Board's make-whole order covering undocumented discriminatees.

Phillip D. Bertelsen, Inc. v. ALRB, (1994) 23 Cal. App. 4th 759 [29 Cal.Rptr.2d 204]

459.14 Petitioners for political asylum who have not been authorized to work by the Atty. Gen. are not "unavailable for work," and thus the INA does not preempt make-whole relief to such discriminatees.

Phillip B. Bertelsen, Inc. v. ALRB, (1994) 23 Cal. App. 4th 759 [29 Cal.Rptr.2d 204]

460.00 FACTORS LIMITING OR TERMINATION LIABILITY

460.02 Misconduct Relating to Employment

460.02 Where the reason for the unlawful failure to reinstate a striker who unconditionally offers to return to work is unrelated to alleged strike misconduct, and thereby the alleged misconduct is not placed squarely at issue, it is not incumbent upon the employer to prove in the liability phase that the employee is nonetheless unfit for reinstatement.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

460.02 Employer cannot escape a finding of unlawful discharge by relying on conduct of the employee that was not considered in the discharge, however, evidence of serious misconduct can nevertheless be the basis for denying the standard remedy of reinstatement and backpay; Since unfitness for reinstatement is in the
nature of a defense to the standard remedy, the burden of proving the misconduct in properly placed on the party asserting the defense.
SUNRISE MUSHROOMS, INC., 22 ALRB No. 2

460.07 Retraining Or Trial Period For New Jobs; Mechanization, Effect Of

460.07 Where former job had not been eliminated, Respondent had no duty to train and assign discriminatee to do

work that he had not done prior to the discrimination.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

461.00 BACKPAY COMPUTATION, DEDUCTIONS AND OFFSET

461.01 Method Of Computing Backpay

461.01 In agriculture, due to normal fluctuations in labor needs from year to year, a comparable employee formula is preferred. However, a prior earnings formula may be used where more accurate methods are not available, though an attempt should be made to account for fluctuations in the amount of work available from year to year.
Oasis Ranch Management, Inc., 21 ALRB No. 11

461.01 In view of Respondent's failure to answer specification, lack of Respondent's records to establish what comparable employees may have earned not an insurmountable barrier to arriving at a backpay figure, where other sources of information, the
individual discriminatee, are shown by pleadings and record.
VALLEY FARMING COMPANY 20 ALRB No. 4

461.01 Backpay is necessarily an approximation. If approximation is reasonable, it may be adopted, especially where lack of other information is a result of Respondent's conscious decision to ignore the Board proceeding.
VALLEY FARMING COMPANY 20 ALRB No. 4

461.01 Though ALJ's use of prior earnings formula not unreasonable in light of his conclusion that record provided no reasonable alternative, Employer met burden of providing a more reasonable formula where Board's review of payroll records indicated that Employer's exhibit based on daily comparison of discriminatee's hours with hours worked by those who performed irrigation work that should have been assigned to discriminatee, which was inherently more accurate than
use of prior earnings, did provide a reasonably accurate calculation based on that formula.

Oasis Ranch Management, Inc., 21 ALRB No. 11

461.01 Calculation of backpay is by definition an estimate and absolute precision is not required nor expected. The Board has broad discretion in choosing an appropriate backpay formula and it need only be a reasonable means of estimating the amount necessary to make the discriminatee whole. Uncertainties in the calculation of backpay will be resolved against the wrongdoing party, whose unlawful conduct created the uncertainties.
OASIS RANCH MANAGEMENT, INC., 20 ALRB No. 19

463.00 BARGAINING MAKEWHOLE REMEDY; APPLICABILITY

463.01 In General

463.01 Bargaining makewhole remedy appropriate for employer's refusal to respond to union inquiries and to continue negotiations where such conduct significantly disrupted the bargaining process and effectively prevented the possibility of reaching a contract.
P.H. RANCH, INC., et al., 21 ALRB No. 13

463.02 Surface Bargaining

463.02 Substantial evidence supports the Board's conclusion that no agreement would have been reached even in the absence of the employer's bad faith bargaining, since it was shown that the employer had a good faith basis for resisting union's wage demands and union was inflexible in its insistence on such rates throughout the makewhole period.
UFW v. *ALRB (Bertuccio)* (1993) 16 Cal.App.4th 1629 [20 Cal.Rptr.2d 879]

463.02 Board correctly held that employer need not show, as a matter of historical fact, that impasse had occurred in order to meet its burden under *Dal Porto*. Employer need only show that the parties would not have reached agreement even if it had not bargained in bad faith and need not show that its bad faith bargaining had no effect upon the failure

to reach agreement.
UFW v. *ALRB (Bertuccio)* (1993) 16 Cal.App.4th 1629 [20 Cal.Rptr.2d 879]

463.03 Technical Refusal To Bargain (see also section 432.02)

463.03 Makewhole appropriate where one of initial grounds for technical refusal to bargain, that election took place in atmosphere of violence and coercion, was frivolous, and where litigation posture was otherwise unreasonable because Board's finding that Respondent was the employer because the harvesting entity was a labor contractor, not a custom harvester, was unassailable and Respondent would have bargaining obligation in any event because it clearly had the substantial long term interest in the agricultural operations.
SAN JOAQUIN TOMATO GROWERS, INC., 20 ALRB No. 13

463.03 Makewhole appropriate where employer's claim that RD did not conduct a sufficient investigation into peak was frivolous and claim that election was improperly held when payroll not at 50% of peak was based on crop and acreage information not provided to the RD prior to the election, which, under the established standards for evaluating peak, is irrelevant. Therefore, employer's claims do not present a "close case" or raise novel legal issues.
Scheid Vineyards and Management co. v. ALRB, (1994) 22 Cal. App. 4th 303 [27 Cal.Rptr.2d 36], affirming 19 ALRB No. 1

463.04 Unilateral Changes

463.04 Board declines to award bargaining makewhole remedy for a unilateral change which is a discrete violation of the bargaining obligation; bargaining makewhole traditionally reserved for situations in which there is record evidence of an extensive bargaining history so that remedy may be evaluated on basis of totality of circumstances.
WARMERDAM PACKING, 22 ALRB No. 13

463.06 Del Porto Presumption

463.06 Employer failed to show that no contract would have been reached even in absence of refusal to bargain where its failure to respond to union inquiries and continue negotiations derailed promising negotiations where parties' differences were not shown to be intractable and where, despite continuing disagreements on several outstanding issues, union had shown a willingness to compromise.
P.H. RANCH, INC., et al., 21 ALRB No. 13

463.06 Substantial evidence supports the Board's conclusion that no agreement would have been reached even in the absence of the employer's bad faith bargaining, since it was shown that the employer had a good faith basis for resisting union's wage demands and union was inflexible in its insistence on such rates throughout the makewhole period.
UFW v. *ALRB (Bertuccio)* (1993) 16 Cal.App.4th
1629 [20 Cal.Rptr.2d 879]

463.06 Board correctly held that employer need not show, as a matter of historical fact, that impasse had occurred in order to meet its burden under *Dal Porto*. Employer need only show that the parties would not have reached agreement even if it had not bargained in bad faith and need not show that its bad faith bargaining had no effect upon the failure to reach agreement.
UFW v. *ALRB (Bertuccio)* (1993) 16 Cal.App.4th
1629 [20 Cal.Rptr.2d 879]

464.00 COMPUTATION OF BARGAINING MAKEWHOLE

464.02 Duration Of Bargaining Makewhole Period

464.02 Appropriate not to award makewhole for intervening period of union-caused delay in bargaining, but not appropriate to also offset employer's earlier period of avoiding negotiations.
P.H. RANCH, INC., et al., 21 ALRB No. 13

465.03 Strikes; Picketing; Secondary Boycott

465.03 ALRB does not have the authority to award compensatory damages to those harmed by illegal secondary boycott activity.
UFW v. *ALRB (Table Grape Commission)*, 41 Cal. App. 4th 303 [48 Cal.Rptr.2d 696 (setting aside *UFW (Table Grape Commission)* (1993) 19 ALRB No. 15 and overruling *Egg City* (1989) 15 ALRB No. 10)

466.00 MISCELLANEOUS REMEDIAL PROVISIONS

466.04 Notice; Posting, Reading, And Mailing

466.04 Where employer has thousands of employees and many locations throughout the state, and conduct at issue affected only employees at one location and is not of the nature that it was likely to become widely known, order clarified so that reading, posting, and mailing remedies are restricted to employer's operations at location where unlawful act occurred. DOLE FARMING, INC., 22 ALRB No. 8

466.06 Attorneys Fees And Costs

466.06 Board is without authority to award attorney's fees in derivative liability proceeding. Claassen Mushrooms, Inc. 20 ALRB No. 9

466.07 Extension Of Certification

466.07 Extension of certification for one year appropriate remedy for employer's failure to respond to union inquiries and continue initial round of negotiations, in order to provide full opportunity for (collective bargaining) process to work. P.H. RANCH, INC., et al., 21 ALRB No. 13

501.00 PRELIMINARY RELIEF AGAINST BOARD OR GENERAL COUNSEL

501.01 In General - Standard for Judicial Intervention

501.01 No denial of due process where Board declined to follow invalidated regulation and had previously announced method in which prospective peak would be calculated in light of invalidation.

ALRB v. *SUPERIOR COURT (Gallo Vineyards, Inc.)* (1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

501.01 No denial of due process by placing burden on employer to provide information to support contention that petition filed when at less than 50 percent of peak employment.

ALRB v. *SUPERIOR COURT (Gallo Vineyards, Inc.)* (1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

501.01 It is questionable whether *Fay* v. *Douds* (2nd Cir. 1949) 172 F.2d 720, which assertedly established a right to immediate review of NLRB decisions where the NLRB fails to afford due process, has any continuing vitality, as the Supreme Court has never approved it, other circuits have questioned or criticized it, even the Second Circuit has limited its application, and no California courts have actually followed the case.

ALRB v. *SUPERIOR COURT (Gallo Vineyards, Inc.)* (1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

501.01 Since 50 percent of peak requirement is to "provide the fullest scope for employees' enjoyment of the rights included in" the Act, procedural provisions of section 1156.4 do not confer any "right" upon the employer in the sense necessary under the *Leedom* v. *Kyne* exception.

ALRB v. *SUPERIOR COURT (Gallo Vineyards, Inc.)* (1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

501.01 Application of *Leedom* v. *Kyne* exception to the general rule against direct judicial review of election decisions is dependent on three factors, all of which must be present. First, the challenged order must be a "plain violation of an unambiguous and mandatory" statutory provision. Second, the order must deprive the complaining party of a right assured to it by the statute. Third, indirect review of the order, through an unfair labor practice proceeding, must be unavailable or patently inadequate.

ALRB v. *SUPERIOR COURT (Gallo Vineyards, Inc.)* (1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

501.02 Clear Violation of the Statute Shown

501.02 Pursuant to a ruling of the Superior Court that the issuance of a decision was invalid because accomplished by means of "certificate of mailing" as authorized by Board regulations, but regulation inconsistent with express statutory language, Board reissues a prior final decision and order in accordance with strict statutory provisions (§1151.4(a)) and rules regulation invalid to the extent it fails to comport with statute. New issuance date begins running of new 30-day period in order to grant Respondent a statutory right of appeal within meaning of section 1160.8.
CERTIFIED EGG (1994) 20 ALRB No. 1

501.02 In light of the ambiguous language of section 1156.4, the Board's own interpretation, the employer's failure to present evidence of crop and acreage statistics that it claims the Board did not uniformly apply, and the *Scheid* decision (22 Cal.App.4th 139) (which held that it is employer's burden to provide crop and acreage statistics and does not suggest that Board has duty to create uniform statistics to be used in calculating peak), there was no plain violation of an unambiguous statute justifying application of *Leedom* v. *Kyne* exception.
ALRB v. *SUPERIOR COURT (Gallo Vineyards, Inc.)* (1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

501.03 Adequacy of Remedy under ALRA; Exhaustion of Administrative Remedies

501.03 *Leedom* v. *Kyne* exception inapplicable where employer has remedy of indirect judicial review through technical refusal to bargain, as employer in no different position than any other which claims that the Board erred in its certification decision.
ALRB v. *SUPERIOR COURT (Gallo Vineyards, Inc.)* (1996) 48 Cal.App.4th 1489 [56 Cal.Rptr.2d 409]

502.00 APPELLATE COURT REVIEW AND ENFORCEMENT OF BOARD ORDERS

502.01 In General

502.01 Pursuant to a ruling of the Superior Court that the issuance of a decision was invalid because accomplished by means of "certificate of mailing" as authorized by Board regulations, but regulation inconsistent with express statutory language, Board reissues a prior final decision and order in accordance with strict statutory provisions (§1151.4(a)) and rules regulation invalid to the extent it fails to comport with statute. New issuance date begins running of new 30-day period in order to grant Respondent a statutory right of appeal within meaning of section 1160.8.
CERTIFIED EGG (1994) 20 ALRB No. 1

502.19 Judicial Review Of Agency Regulations

502.19 Pursuant to a ruling of the Superior Court that the issuance of a decision was invalid because accomplished by means of "certificate of mailing" as authorized by Board regulations, but regulation inconsistent with express statutory language, Board reissues a prior final decision and order in accordance with strict statutory provisions (§ 1151.4(a)) and rules regulation invalid to the extent it fails to comport with statute. New issuance date begins running of new 30-day period in order to grant Respondent a statutory right of appeal within meaning of section 1160.8.
CERTIFIED EGG (1994) 20 ALRB No. 1

504.00 JURISDICTION AS BETWEEN ALRB AND NLRB OR STATE OR FEDERAL COURTS; PREEMPTION; ABSTENTION

504.01 In General

504.01 Assertion of prospective jurisdiction by the NLRB preempts ALRB from asserting jurisdiction over an earlier period, absent evidence that the employer's operations had changed, even where ALRB jurisdiction had previously been undisputed.
Bud Antle v. *Barbosa, et al.*, 45 F.3d 1261 (1994)

504.01 Matter dismissed because, under existing precedent, Board preempted from proceeding to adjudicate

merits of unfair labor practice allegations where prior NLRB decision finding employer's packing shed to be commercial operation under the rule adopted in Camsco Produce Co., Inc. (1990) 297 NLRB 905 included factual findings showing that employer packed outside produce during the period up to and including the time of the alleged unfair labor practices.
GERAWAN FARMING CO., INC., et al., 21 ALRB No. 6

504.01 In accordance with Vargas v. Municipal Court (1978) 506.0422 Cal.3d 902, court's rejection of retaliatory eviction defense in context of denying injunction against eviction has no res judicata or collateral estoppel effect upon ALRB, as Board has exclusive jurisdiction to adjudicate the merits of unfair labor practice charges.
TAYLOR FARMS, 20 ALRB No. 8

504.04 Proceedings Pending Before NLRB Or Federal Courts

504.04 Private party may bring an action in a federal district court seeking injunctive relief on the basis of Garmon preemption. Anti-Injunction Act applies only to state court proceedings and does not bar injunction against ongoing administrative proceedings.
Bud Antle v. Barbosa, et al., 45 F.3d 1261 (1994)

504.05 Abstention

504.05 Abstention doctrine does not prevent federal district court from enjoining state proceedings where preemption is "readily apparent."
Bud Antle v. Barbosa, et al., 45 F.3d 1261 (1994)

505.00 SCOPE OF ALRB JURISDICTION; APPLICABILITY OF ALRB

505.04 Prior Rulings By NLRB Or Federal Courts; Advisory Opinions By NLRB, Refusal By NLRB To Issue Complaint; Withdrawal Of Charges, Effect On Subsequent ALRB Determination

505.04 Matter dismissed because, under existing precedent, Board preempted from proceeding to adjudicate merits of unfair labor practice allegations where prior NLRB decision finding employer's packing shed to be commercial operation under the rule adopted in Camsco Produce Co., Inc. (1990) 297 NLRB 905 included factual findings showing that employer packed outside produce during the period up to and including the time of the alleged unfair labor practices.
GERAWAN FARMING CO., INC., ET AL., 21 ALRB No. 6

600.00 EVIDENCE

600.00 GENERAL LEGAL PRINCIPLES

600.15 Witnesses: Pretrial Statements

600.15 Where respondent given full opportunity during hearing to examine witnesses about any inconsistencies in pretrial declarations and to have such portions of declarations admitted as prior inconsistent statements, ALJ properly refused to admit entire declarations on grounds that remainder of declarations constitute inadmissible hearsay, are irrelevant, and admission would not allow witness to explain any inconsistencies beyond those identified at hearing.
DOLE FARMING, INC., 22 ALRB No. 8

601.00 AGENCY; RESPONSIBILITY FOR CONDUCT OF OTHERS

601.01 In General; Broad Definition Of Agency, Labor Code Section 1165.4

601.01 Employer asserting that union agents engaged in pre-election misconduct has burden of proving agency relationship.
OCEANVIEW PRODUCE CO., 21 ALRB No. 1

603.00 UNION RESPONSIBILITY FOR THE CONDUCT OF OTHERS

603.03 Union Responsibility For Acts Of Its Officers, Members And Others

603.03 A special agency relationship does not arise in all

circumstances involving the solicitation of authorization cards. Rather, as stated in Davlan Engineering, Inc. (1987) 283 NLRB 803, those soliciting authorization cards will be deemed special agents of the union for the limited purpose of assessing the impact of statements about union fee waivers or other purported union policies that can be counteracted simply by making the union's internal policies known.
OCEANVIEW PRODUCE CO., 21 ALRB No. 1